walk across the crosswalk toward the curb on the northeast corner. From a distance of about 15 feet, he testified the following ensued:

> "As the two cars pulled up and parked at the curb, the doors on the cars opened up and the passengers got out of the both cars, getting onto the sidewalk. As they all did, the drivers of both cars also got out and got up onto the sidewalk. As the two drivers got to the sidewalk, I said, 'Fellows, you can't park these cars here. It's a restricted area. If you want to drop something off, you've got about a minute to do it. You've got to take these cars beyond the bridge and park them out there and walk back.'
>
> "He (Pressman) got out of the car and turned — after I made the statement, turned to the drivers and says, 'Wait a minute, don't move them.' The drivers had already started to head for the cars when he made this statement, and turned around and headed towards the curb. He then proceeded to come around to where I was standing on the corner and he said to me, he said, 'What do you mean, we can't park here? Don't you know we're the press?' I said, 'It doesn't make any difference who you are. It's a restricted area and there's no cars allowed to park here. You can stop for a second to drop something off, which you had plenty of time to do. These cars have to be taken and parked beyond the railroad tracks, some place in that area, and then

you'll have to walk back.'

"At this point he said, 'What are you going to do about it? In fact we're not going to move them, so what are you going to do?' I said, 'If you don't move them, I'll have them removed.' At this point he said, 'What are you going to do to me?' and 'Shoot me, shoot me, shoot me,' pushing his face up into my face until he was only about two or three inches away from it.

"I took a step back and told him if he didn't behave himself he's going to be placed under arrest. At that point he said, 'Who the hell do you think you are. Don't you know who I am? Don't you know who I am?'"

Waldron did not then know that petitioner was a television reporter of the news on N.B.C. He told petitioner he was under arrest and led him to nearby police headquarters.

When questioned on cross-examination as to at what point petitioner "obstructed, hindered or interfered with" his police duties, Waldron answered:

"When the cars parked on the northeast corner of Watchung Avenue and East 4th Street, but on Watchung Avenue, after the drivers were told that they could not stay parked there, he [Pressman] told the drivers to leave the cars there, not to move them. This is where he interfered with my orders."

The petitioner was charged with violating City Ordinance 10:4-5 in that he

> "did intentionally obstruct or hinder the said officer in the performance of his duties by ordering the operators and occupants of two motor vehicles not to remove their motor vehicles from a prohibited parking area after the said police officer ordered the said vehicles to be removed from the said prohibited parking area."

Although sharply disputed by the petitioner and his witnesses, thus creating factual issues to be resolved by assessing the credibility of all witnesses, the State's evidence was found credible by the magistrate, who adjudged petitioner guilty after trial without a jury in the Plainfield Municipal Court. He was fined $100 and $5 costs were imposed. Upon appeal to the Union County Court, and after a trial de novo upon the stenographic record of the municipal court trial, the conviction was upheld and the same fine imposed.

Upon further appeal to the Appellate Division of the New Jersey Superior Court, the conviction was affirmed. The New Jersey Supreme Court denied, without opinion, a petition for certification to review the Appellate Division judgment, and Pressman now petitions this Court for a writ of certiorari. Payment of the fine has been stayed pending all appeals.

Argument

Point I

The within matter does not contain a substantial federal question, and the decision below is in accord with applicable decisions of this court.

Petitioner was found guilty of violating the following Plainfield City Ordinance:

> "10:4-5. Opposing police or other officers. It shall be unlawful knowingly and willfully to resist or oppose any police or other officer of this State, County or City when such officer is making an arrest or serving any writ, bill, order or other process; or intentionally to obstruct or hinder any such officer in the performance of his duty; or to refuse or neglect to assist any such officer, when lawfully required to do so by him, in making an arrest, in the services of any process or in the suppression of a breach of the peace."

The words "intentionally to obstruct or hinder," as used in this ordinance, have been authoritatively construed by the New Jersey Supreme Court in the interpretation of the disorderly persons' statute, R.S. 2A:170-29, N.J.S.A. State v. Smith, 46 N.J. 510, 218 A.2d 147 (1966). That statute makes one a disorderly person who "obstructs, molests or interferes with any person lawfully...in any place, public or private." Smith involved persons who partially blocked the doors leading to the council chamber where the governing body of the

City of Trenton was conducting a public meeting. In affirming the conviction, the Court said:

> "The statute does not require that the obstruction or interference be complete or enduring. The word 'obstruct' includes hindering,... and of course 'interfere' does not require a total frustration. It is enough that defendants immobilized themselves at a place designed for passage, and did so for the purpose, as their attitude of immobility strongly suggested, and with the effect of making it difficult for others to use the corridor in going in and out of the council chamber" Id., 46 N.J. at 520, 218 A.2d at 152-153.

In so construing the statute, the New Jersey Supreme Court relied upon State v. Furino, 85 N.J. Super. 345, 204 A.2d 718 (App. Div. 1964), where the Appellate Division of the Superior Court had earlier dealt with the same language in the following manner:

> "The three verbs are definite, clear and distinct, readily understood and employed in the every-day speech of the man on the street. Refined definition is unnecessary. 'Obstruct' means to object or come in the way of; to hinder from action; to impede. 'Molest' means to interfere with or meddle with unwarrantably. And 'interfere' is defined as to enter into or take a part in the concern of others; to intermeddle, intervene."

* * *

> "We conclude that the elements of the offense proscribed by the statute in question are specific. No man of common intelligence would have to guess at the meaning of the statute, and the conduct condemned is certain" Id., 85 N.J. Super. at 348 and 349, 204 A.2d at 719 and 720."

Clearly, the construction of this statutory and ordinance language by the highest court of the state is binding upon this Court. N.A.A.C.P. v. Button, 371 U.S. 415 (1963), Cox v. Louisiana, 379 U.S. 536 (1965), Shuttlesworth v. Birmingham, 382 U.S. 87 (1965).

The petitioner's conduct was found by the state courts as "clearly an obstruction and hindering" of the performance of Officer Waldron's duty to keep traffic moving without interruption or unnecessary stoppage.

Petitioner would now urge in this Court that the subject ordinance, as so construed, remains so overly broad and vague as to be constitutionally defective. By such an argument, however, he attempts to make this case something it is not. Apparently this is done in an effort to invoke the jurisdiction of this Court under Rule 19, on the ground a state court has decided a federal question in a way probably not in accord with the applicable decisions of this Court.

Petitioner argues he was denied his fundamental right of free speech by a police officer while he sought to explain his special circumstances and

position to that officer. If that were the case, perhaps the result would not be in accord with the principles enunciated in Cox v. Louisiana, supra, Shuttlesworth v. Birmingham, supra, and Gregory v. City of Chicago, 394 U.S. 111 (1969).

Such an argument, however, ignores the fact (specifically found by the state courts) that petitioner was arrested and convicted for words and conduct and not mere argument. Petitioner was not denied an opportunity to protest the officer's decision that the cars would have to be moved, nor denied an opportunity to urge the officer to reconsider that decision. Rather than electing to do either, petitioner instead immediately interfered with the order given by the officer, and hindered and intervened between the two drivers and the officer. Respondents know of no constitutionally protected right to interfere with and countermand a police officer's orders, and certainly the cases cited by petitioner create no such right.

In Thompson v. Louisville, 362 U.S. 199 (1960), it was expressly found that petitioner there had not "engaged in any conduct of any kind likely in any way to adversely affect the good order and tranquility of the City of Louisville" (p. 205). Similarly, in Wright v. Georgia, 373 U.S. 284 (1963) and Cox v. Louisiana, supra, the records were "devoid" of evidence of any activity which the Georgia and Louisiana breach of the peace statutes might be thought to punish, so that the statutes were being construed by the states to penalize conduct which could not be constitutionally punished. Here, the record contains evidence of the conduct proscribed, and the city ordinance

was neither overly broad nor construed in an unconstitutional manner.

Petitioner urges he did nothing more than "simply question the authority and logic of a police officer's command." Such an argument ignores his conduct, what he did and said, which, when combined, were calculated to hamper and interfere with the performance of the officer's duty to keep traffic moving. As the Appellate Court in New Jersey said:

> "This was not simply a case of a citizen arguing with a policeman. It involved a deliberate altercation and challenge of the authority of a police officer to the end that the two cars would remain parked for a longer time than the short grace period to allow one of the occupants to drop something off" (Pet. App. B. p. 12a).

Finally, petitioner now attempts to attach special significance to his conviction as deterring newsman from gaining access to the sources of news and discouraging the free discharge of the press function. Aside from the fact that petitioner was acting as a courier or messenger of film at the time of the incident, not as a newsgatherer, this argument is a complete reversal of the position taken below.

In summation before the Municipal Court, his attorney stated:

> "And I am not referring to Mr. Pressman as a member of the press. To me this gives

> him no special, extra privilege. We are not here because we are asking special, extra privilege" (Tr. 501a).

Before the county court on de novo review, petitioner's counsel again stipulated:

> "Your Honor, with Mr. Tozzi's permission, this is another reminder that I represent the defendant Gabe Pressman not in the category of a First Amendment case whatsoever" (Tr. 564a).

Respondents submit there is no merit to petitioner's attempt to clothe himself with special privilege at this stage of the proceeding. More importantly, the fundamental rights held by all citizens have in no way been impaired by this conviction.

It is, therefore, respectfully submitted that this case contains no substantial federal question, nor does the decision of the New Jersey courts in any way fail to accord with the applicable decisions of this Court.

Conclusion

Respondents respectfully pray that the petition for the writ of certiorari in the within matter be denied.

Respectfully submitted,

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